IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 607 OF 2001
IN
SESSIONS CASE NO.673 OF 1999

Sandip Harishchandra Chalke .. Appellant

Vs.

The State of Maharashtra & Anr. .. Respondents

Mrs.Racheeta Dhuru for the appellant

Mr.K.V.Saste, A.P.P. for the respondent / state

CORAM : J.N.PATEL &
A.A.SAYED, JJ.

DATED : 26TH APRIL, 2007

ORAL JUDGMENT (PER J.N.PATEL, J) :

1. By this appeal, the appellant accused challenges the judgment and order dt.20.04.01 and 02.05.01 passed by the Addl. Sessions Judge, Sessions Court, Greater Bombay delivered in Session Case No.673 of 1999 wherein the appellant accused was prosecuted on a charge of having committed murder of Dnyaneshwar and has been sentenced to suffer rigorous imprisonment for life and also to

pay a fine of Rs.10000/- and in default to suffer rigorous imprisonment for two years. The court also ordered that out of the fine if recovered, compensation of Rs.5,000/- to be paid to the wife of the deceased Dnyaneshwar Gaikwad i.e Sushila Gaikwad, P.W.No.1.

2. It is the prosecution's case that both the appellant accused and the deceased were resident of the same area i.e. Dharavi in the city of Mumbai. The relations between the appellant accused and the deceased were strained as the deceased had lodged police complaint against the brother in law of the accused, Mahadev Naik and the said Mahadev Naik along with his wife and two other persons came to be arrested and were remanded to police custody which case is still pending. It is in this backdrop that on 20.02.99 the deceased Dnyaneshwar Gaikwad reached his house at about 12.00 in the noon and informed his wife P.W.No.1 Sushila Gaikwad that the appellant accused Sandip Harishchandra Chalke is following his movement and is chasing him and, therefore, he suspects some foul play. Thereafter, the deceased had his food and took rest

for some time. At about 3.30 p.m. he got up in order to go for toilet and went to nearby public toilet. P.W.No.1 his wife became apprehensive and in the said anxiety went towards the toilet. On reaching the public toilet, she saw her husband Dnyaneshwar lying on the ground and the accused was sitting on his chest and he brandished a knife which he was holding in his hands and same was smeared with blood. When she cried loudly, the accused Sandip Chalke noticed P.W.No.1 Sushila, he got up and immediately ran away on the other side and vanished P.W.No.1, Sushila the complainant went near her husband but before she could have any talk with him, he was unconscious and probably died on the spot. P.W.No.1, Sushila cried for help and her neighbours namely Uma and Sheela came to her rescue. They all came to the victim and took him to the Sion Hospital, the doctors on examining declared him to be dead. Coincidently, P.I. Suresh Daulatrao Sakhare P.W.No.5 happened to visit Sion Hospital on receiving a message that Talib Khan was brought in an injured condition. On reaching the hospital, he came to know that another injured by name Dnyaneshwar Gaikwad i.e. the

deceased was also brought in the Hospital. So he verified the information and found that the said Dnyaneshwar has been declared dead before being admitted in the Hospital. P.W.No.1, Sushila, wife of the deceased was in the Hospital. P.I.Sakhare then directed P.S.I. Khartode to prepare the inquest panchnama (Exhibit 8) of the dead body of Dnyaneshwar Gaikhwad and the same to be sent for post mortem examination. The statement of P.W.No.1 came to be recorded in the hospital itself which was treated as an F.I.R. (Exhibit 7) and the police obtained the crime number on telephone. The offence came to be registered vide Crime No.126 of 99 under section 302 of the Indian Penal Code against the accused. The police thereafter visited the spot and prepared spot panchnama (Exhibit 11) and all the articles from the spot including the samples of blood stains came to be collected. Clothes of the deceased were seized.

3. In the course of the investigation, police recorded statement of witnesses and also tried to search the accused at various places but he was found to be absconding. It is on 22.02.99 that the

appellant accused surrendered himself in the police station at 14.30 hours. He came to be arrested by P.S.I.Nadhe. On his interrogation police were able to seize the knife (Article 7) alleged to be used for committing the offence under the panchnama Ex.17. All the articles seized during the course of investigation were forwarded to Chemical Analyser's office for his report. On completion of the investigation P.I.Yadav submitted charge sheet in the court of Metropolitan Magistrate Bandra on 19.5.99 i.e. how the case of the appellant accused came to be committed before the court of Sessions where he was tried, found guilty and convicted.

4. In reply to the charge, the appellant accused pleaded not guilty. He claimed to be tried. He took the plea that he has been falsely implicated due to enmity and also submitted his written submission / argument.

5. The learned counsel for the appellant accused submitted that the prosecution case rest on the sole testimony of P.W.No.1, Sushila Gaikwad who is the wife of the deceased and highly interested

witness. It is submitted that her evidence is unreliable as it is self contradictory and inconsistent. At one stage she has deposed in her examination in chief that she actually saw the appellant accused assaulting her husband with a knife while in her cross examination she has admitted that she saw the accused assaulting her husband with knife but cannot assign any reason why this fact is not recorded in her complaint which is a material omission and cannot be taken into consideration as substantive evidence to prove that the appellant accused was the assailant for the said purpose.

6. The learned counsel for the appellant accused placed reliance on the decision rendered by the Supreme court in the case of **Yudhishtir vs. The State of Madhya Pradesh reported in 1971 Supreme Court Cases (Cri.) 684** wherein the Supreme Court held that when a particular fact deposed to by the witnesses does not find mention both in F.I.R. and in the statements recorded under section 161 of the Cr.P.C., it is an improvement and it cannot be considered.

7. Another contention on behalf of the learned counsel for the appellant accused is that P.W.No.1 Sushila has given different version of the fact as to where her statement came to be recorded i.e. at her residence or at the hospital. It is submitted that according to police her statement was recorded at the hospital itself and was treated as F.I.R. whereas P.W.No.1 in her evidence has stated that it was recorded at her residence. This is another material inconsistency which affects the credibility of the witness and rather goes to show that she is not an eye-witness to the incident but a brought up witness and being the wife of the deceased she has falsely implicated the appellant accused.

8. It is further contended by the learned counsel for the appellant accused that the presence of P.W.No.1, Sushila at the scene of occurrence is doubtful for the very reason that there is no other witness or corroborative piece of evidence to show her presence at the scene of occurrence and if she was really present at the scene of occurrence,

there is no reason why police did not seize her saree which according to the prosecution was stained with blood. On the other hand, the persons who took the victim to the hospital were Uma and Sheela and the prosecution failed to examine them as witnesses and, therefore, prosecution having failed to examine material witnesses, this court should draw adverse inference in the matter that the prosecution is trying to suppress the real story.

9. It is contended by the learned counsel for the appellant accused that the learned trial court has observed in its judgement that the appellant accused had a motive to kill her husband without any evidence to that effect. It is submitted that in so far as other piece of evidence is concerned relating to discovery of knife (Article 7) it is foisted on the appellant accused and the witnesses identified the weapon of assault in the court for the first time creates doubt in one’s mind as regards the truthfulness of the prosecution case. It is therefore, submitted that it will be most unsafe to convict the appellant accused on the sole

testimony of P.W.No.1 who is highly interested witness in the case. Therefore, the appellant accused deserves to be given benefit of doubt.

10. The Ld.A.P.P. on the other hand submitted that though the prosecution case rest on the sole testimony of P.W.No.1, Sushila that by itself does not make it unreliable. It is submitted that the evidence of P.W.No.1, Sushila has to be read as a whole in order to appreciate as to whether she is a reliable witness. The Learned A.P.P. submitted that it is a well settled law that conviction can be based on the testimony of sole eye witness even if the witness is relative of the deceased, if the evidence of such witness is found to be reliable, further there is no reason why P.W.No.1 who is the wife of the deceased would allow the real culprit to escape.

11. It is further submitted by the learned A.P.P. that the trial court has taken into consideration the evidence of P.W.No.1, Sushila and has found her to be a reliable witness as Sushila knew the assailant by name and when she reached the

scene of occurrence she had seen the accused assaulting her husband with a knife in his hand and that when the appellant accused noticed her presence as she cried for help, he escaped from the scene of occurrence and she could see him holding the knife which was smeared with blood. It is therefore submitted that this evidence if accepted as it stands fully corroborated by the F.I.R. lodged by P.W.No.1, the nature of injuries found on the victim, the discovery of knife (Article 7) at the instance of the accused and the C.A.'s report which clearly records the finding that the blood group found on the weapon of assault was of 'AB' group which is that of the deceased for which there is no explanation on the part of the appellant accused. It is submitted that some of the witnesses have turned hostile, which is nothing unusual particularly in slum areas. The learned A.P.P. therefore submitted that the prosecution has proved the case against the appellant accused beyond reasonable doubt and therefore the appeal deserves to be dismissed.

12. There are various other grounds which are

taken up for challenging the decision of the trial court, but in our view those contentions do not materially affect the prosecution's case and are trivial in nature in context to the evidence on record. The case of the prosecution in so far as direct evidence is concerned depends on the evidence of P.W.No.1, the wife of the deceased Dnyaneshwar Gaikwad. In her evidence before the court, she has spelt out the background which resulted in murder of her husband. In so far as identity of the accused, Sandip Chalke is concerned, it has been established as the witness not only knows the appellant accused but has also identified him in the court. She has deposed to the effect that on the fateful day while she was at home in the afternoon, her husband came and told her that Sandip was chasing him while he had gone out and after taking his meals he took rest for some time and went to the public toilet. As she suspected something may happen she went towards the public toilet to see her husband but then found her husband lying on the ground. She did see the appellant accused holding a knife stained with blood in his hand and the same has been stated by

her in examination in chief that she saw the accused assaulting her husband with a knife. This fact does not find place in her report lodged with the police i.e. complaint F.I.R. (Ex.7). But if the evidence of this witness is read as a whole, we find that the trial court has properly appreciated the evidence of P.W.No.1 and found it to be reliable as in her cross examination not only motive has been brought on record that her husband had filed criminal case against Mahadev Naik being the brother in law of appellant accused but as regards the incident, it was specifically suggested and she has deposed to the effect that it is true that the complaint which was filed by her husband against Mahadev Naik is relating to abuses on caste and assault and on account of taking water tap connection. She has further stated that it is true that when she shouted for help people ran helter-skelter and she took her husband in a taxi which was hired from Subhash Road. She alongwith Uma and Sheela lifted her husband and she further confirms that police came at the time doctor examined her husband and that she had seen the appellant accused running towards the Subhash Nagar

Area and that she went to the scene of occurrence to save her husband and while escaping from the scene of occurrence accused crossed her and she noticed that he was holding a knife which was stained with blood. This witness was cross examined at length but except for omission in her complaint to the effect that she saw the accused assaulting her husband with a knife, nothing is brought on record that she is deposing falsely in order to implicate the appellant accused. The evidence of Sushila, P.W.No.1 stands duly corroborated by the F.I.R. lodged by her where she has disclosed name of the appellant accused at the earliest opportunity when her statement came to be recorded. Whether the statement was recorded at the hospital or at the residence is not material, as the witness deserves such latitude considering the fact that there was sufficient time-lag between the incident and her evidence recorded in court, and we have no reason to disbelieve P.I.Sakhare, P.W.No.5, Police Officer who had visited Sion Hospital pursuant to the report received that one Taleb Khan was admitted in an injured condition. It was specifically stated that the statement of

P.W.No.1, Sushila came to be recorded at the hospital and obtained a crime number on telephone and immediately thereafter inquest panchnama was prepared in the presence of the panchas.

13. Dr.Ashok Gangaram Shinde, P.W.No.6 who was attached to Rajawadi Coroner Court during the relevant time has conducted autopsy, found 11 incise stab wounds all over the body including two abrasion and one contusion. In his evidence before the court he has clearly stated that injuries no.1, 2 and 3 with their respective internal injuries individually were sufficient to cause death and that the object of assault might be double edged sharp tapering weapon. When confronted with the knife Article 7 he has opined that these injuries can be caused by knife (Article 7) and that cause of death is haemorrhage and shock due to multiple stab injuries on vital organs.

14. It is worthwhile to note that the knife (Article 7) came to be seized at the instance of the accused which has been proved by examining P.W.No.4, Mr.Anthony Sabastin Nadar and P.I.Sakhare

P.W.No.5. The Knife was sent to the Chemical Analyser's office and the C.A's report (Exhibit 19) clearly records that knife wrapped in paper labelled which is Exhibit 11 was stained with human blood which was of 'AB' Group. The C.A.'s report also refers to the clothes of the deceased which were found stained with blood and were also found to be having blood of Group 'AB'. So also the full pant wrapped in paper label - H which has been seized from the appellant accused was also found stained with blood of group 'AB'. The blood group 'AB' is uncommon and the C.A.'s report clearly establishes that it was the blood group of the deceased and corroborates the evidence of PW.no.1 that the appellant accused has stabbed her husband with a knife which was recovered at the instance of the appellant accused.

15. Therefore considering the evidence of P.W.No.1, Sushila which stands dully corroborated, we have no hesitation to arrive at a conclusion that it is the appellant accused who is the author of the injuries which caused death of Dnyaneshwar Gaikwad. Therefore, we find that the trial court

was justified in arriving at a conclusion that it is the appellant accused who has committed the murder and rightly convicted and sentenced him relying on the sole testimony of P.W.No. 1, Sushila by taking into consideration the incriminating circumstances and the corroborative evidence brought on record by the prosecution.

16. The trial court has awarded compensation to Sushila, P.W.No.1. If the fine is paid by the appellant accused as directed by the trial court, the compensation awarded by the trial court should be paid to Sushila under due intimation by the trial court as though she was given notice by this court but she failed to appear and represent her cause in the matter of grant of compensation. Smt.Sushila (P.W.No.1) be paid compensation as awarded by the trial court. We find that the appeal is devoid of merits and, therefore, we dismiss the appeal.

(SHRI J.N. PATEL, J)

(SHRI A.A. SAYED, J)